

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

HARMONY GOLD U.S.A., INC.,

Plaintiff,

v.

HAREBRAINED SCHEMES LLC,
HAREBRAINED HOLDINGS, INC.,
JORDAN WEISMAN, PIRANHA GAMES
INC., INMEDIARES PRODUCTIONS,
LLC, and DOES 1–10

Defendants.

CASE NO. 2:17-cv-00327-TSZ

SECOND AMENDED COMPLAINT

Plaintiff Harmony Gold U.S.A., Inc. (“Harmony Gold”) alleges as follows:

PARTIES

1. Plaintiff Harmony Gold U.S.A., Inc., is a California corporation with its principal place of business in Los Angeles, California.

2. Defendant Harebrained Schemes LLC is a limited liability company formed under the laws of the State of Washington with its principal place of business in Kirkland, Washington.

3. Defendant Harebrained Holdings, Inc., is a corporation formed under the laws of the State of Washington with its principal place of business in Bellevue, Washington. On information and belief, Harebrained Holdings, Inc., does business under the name Harebrained

1 Schemes. (Harebrained Schemes LLC and Harebrained Holdings, Inc., are referred to
2 collectively as “Harebrained Schemes”).

3 4. Defendant Jordan Weisman (“Weisman”) is an individual who, on information
4 and belief, resides in Bellevue, Washington. On further information and belief, Weisman is the
5 CEO and registered agent for Harebrained Schemes LLC, and is a governor of Harebrained
6 Holdings, Inc. Weisman is the moving, active and conscious force behind Harebrained Schemes;
7 has directed and controlled the activities of Harebrained Schemes complained of herein; has
8 participated in, assisted in and/or is responsible for the conduct alleged herein; and entered into
9 the Settlement Agreement with Harmony Gold at issue in the breach-of-contract claim set forth
10 in this Complaint.

11 5. Defendant Piranha Games Inc. (“Piranha Games”) is a corporation created under
12 the laws of British Columbia, Canada, with its principal place of business in Vancouver, British
13 Columbia, Canada.

14 6. Defendant InMediaRes Productions, LLC, is a limited liability company formed
15 under the laws of the State of Washington, with its principal place of business in Lake Stevens,
16 Washington. On information and belief, InMediaRes Productions, LLC, operates the imprint
17 game production company Catalyst Game Labs, and hereinafter is referred to as “Catalyst Game
18 Labs”.

19 7. On information and belief, Does 1–10 (collectively, the “Doe Defendants”) are
20 individuals and business entities who have participated or assisted in the conduct alleged herein
21 or are otherwise responsible therefor. The identities of these Doe Defendants presently are not
22 and cannot be known to Harmony Gold, but these persons and/or entities will be added as named
23 defendants to this action as and when they are identified (collectively, Harebrained Schemes
24 LLC, Harebrained Holdings, Inc., Weisman, Piranha Games, Catalyst Game Labs and the Doe
25 Defendants are referred to herein as “Defendants”).

JURISDICTION AND VENUE

8. This Court has jurisdiction because (i) this action arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and jurisdiction is specifically conferred by 28 U.S.C. §§ 1331 and 1338(a); and (ii) this is an action between citizens of different states in which the value of the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs, jurisdiction being conferred in accordance with 28 U.S.C. § 1332. Jurisdiction for the Washington State common law claim is conferred in accordance with the principles of supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

9. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) in that Defendants Harebrained Schemes LLC, Harebrained Holdings, Inc., Weisman and Catalyst Game Labs reside in this judicial district. Venue is proper under 28 U.S.C. § 1391(c)(3) in that Defendant Piranha Games is a foreign resident based in Vancouver, British Columbia, Canada, and on information and belief there is no other judicial district in which venue would be more appropriate. Venue is also proper under 28 U.S.C. § 1391(b)(2) as a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district.

FACTS

Harmony Gold and the History of “Robotech”

10. This case involves animated giant warrior robots. In or around 1982, Japan-based Tatsunoko Production Company, Ltd. (“Tatsunoko”), together with Japan-based Big West and Studio Nue, created a series of original warrior robots and incorporated them into an animated television series in Japan named “Macross.” Although ownership in various elements of “Macross” was jointly held by Tatsunoko, Big West, and Studio Nue, by agreement between the parties, Tatsunoko has always had the exclusive right to license “Macross” internationally, including all international rights in and to the characters and artwork contained in “Macross.”

1 Consistent with this agreement, Big West and Studio Nue have never exploited “Macross”
2 outside of Japan.

3 11. In the early 1980s, Tatsunoko produced two additional animated television series
4 in Japan that incorporated its futuristic warrior robots — “Mospeada” and “The Southern
5 Cross”— for which it was also the exclusive owner in Japan.

6 12. In 1984, Tatsunoko granted entertainment production company Harmony Gold an
7 exclusive license to adapt the Macross, Mospeada and The Southern Cross series for a television
8 series in the United States, which Harmony Gold named “Robotech.” Harmony Gold’s
9 exclusive license to “Macross” expressly included all rights to the artwork, animation, and
10 characters contained in “Macross” including all rights to exclusively exploit the artwork,
11 animation, and characters. In 1985, the first of 85 episodes of the Harmony Gold-produced
12 Robotech animated series aired in the United States. (Hereinafter, all of Harmony Gold’s
13 Macross, Mospeada, The Southern Cross and Robotech shows, characters, products and
14 derivative works are referred to as “Robotech.”) Consistent with its agreement with Tatsunoko,
15 Harmony Gold obtained a copyright registration in “Macross,” including the animation, story,
16 and soundtrack, in all 36 episodes of the series (PAu 740,323; March 28, 1985 registration date).

17 13. Tatsunoko also granted Harmony Gold an exclusive license to market in the
18 United States all merchandise incorporating Robotech warrior robots, such as books, toys, video
19 games, films, comic books and apparel. Harmony Gold possesses this exclusive license to this
20 day.

21 14. In 1991, Tatsunoko and Harmony Gold renewed Harmony Gold’s exclusive
22 license for Macross, Mospeada, and The Southern Cross, including Harmony Gold’s exclusive
23 license in and to the “Macross” artwork, animation, characters, and merchandising rights in the
24 United States, and through a series of operative amendments, this license remains valid today.


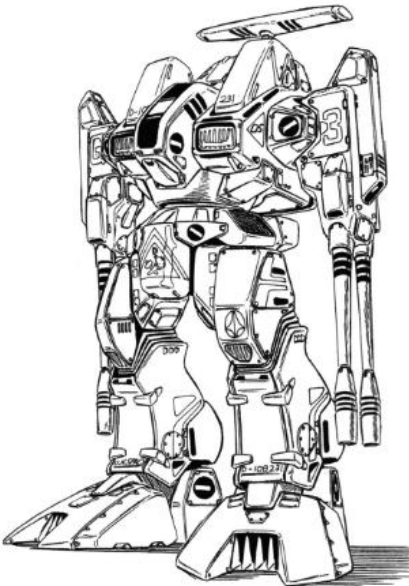
25 15. Harmony Gold and Tatsunoko are owners of a large portfolio of United States
Copyright Registrations for animated programs, books, comic books and other materials

1 incorporating images of the Robotech warrior robots, including, without limitation, the
2 following:

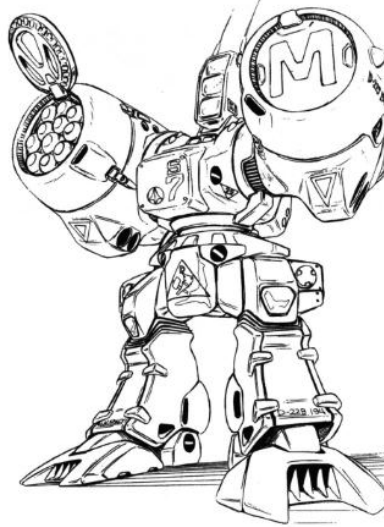
- 3 • “Macross: Booby Trap” (PA 252,486); February 7, 1985 registration date;
- 4 • “Mospeada” (PAu 740,321); March 28, 1985 registration date;
- 5 • “Southern Cross” (PAu 740,322); March 28, 1985 registration date;
- 6 • “Macross” (PAu 740,323); March 28, 1985 registration date;
- 7 • “Robotech” (PA 260,432); August 22, 1985 registration date;
- 8 • “Robotech II: The Sentinels” (PA 370,656); August 11, 1987 registration date;
- 9 • “Robotech II: The Sentinels; Episodes 1, 2 and 3” (PAu 1,117,191); August 11,
10 1987 registration date; and
- 11 • “Robotech 3000” (PAu 2,415,945); May 26, 1999 registration date.

12 The certificates for these registrations are attached as Exhibit A.

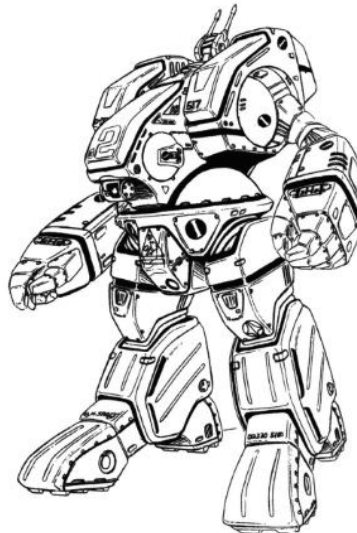
13 16. The warrior robots depicted in the Robotech copyright registrations owned by
14 Harmony Gold include, but are not limited to, the following:

Robotech Warrior Robot Name	Robotech Warrior Robot Image
Armored Valkyrie	
Destroid Defender	

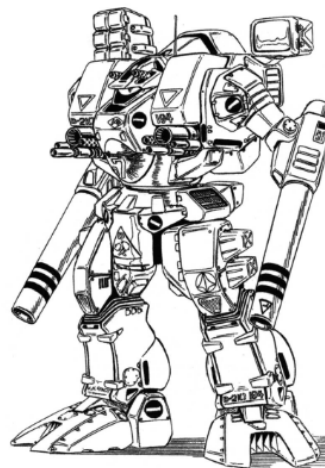
Destroid Phalanx



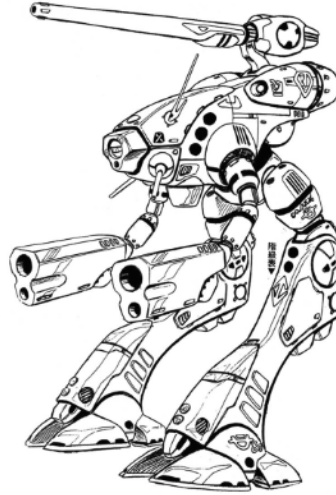
Destroid Spartan



Destroid Tomahawk

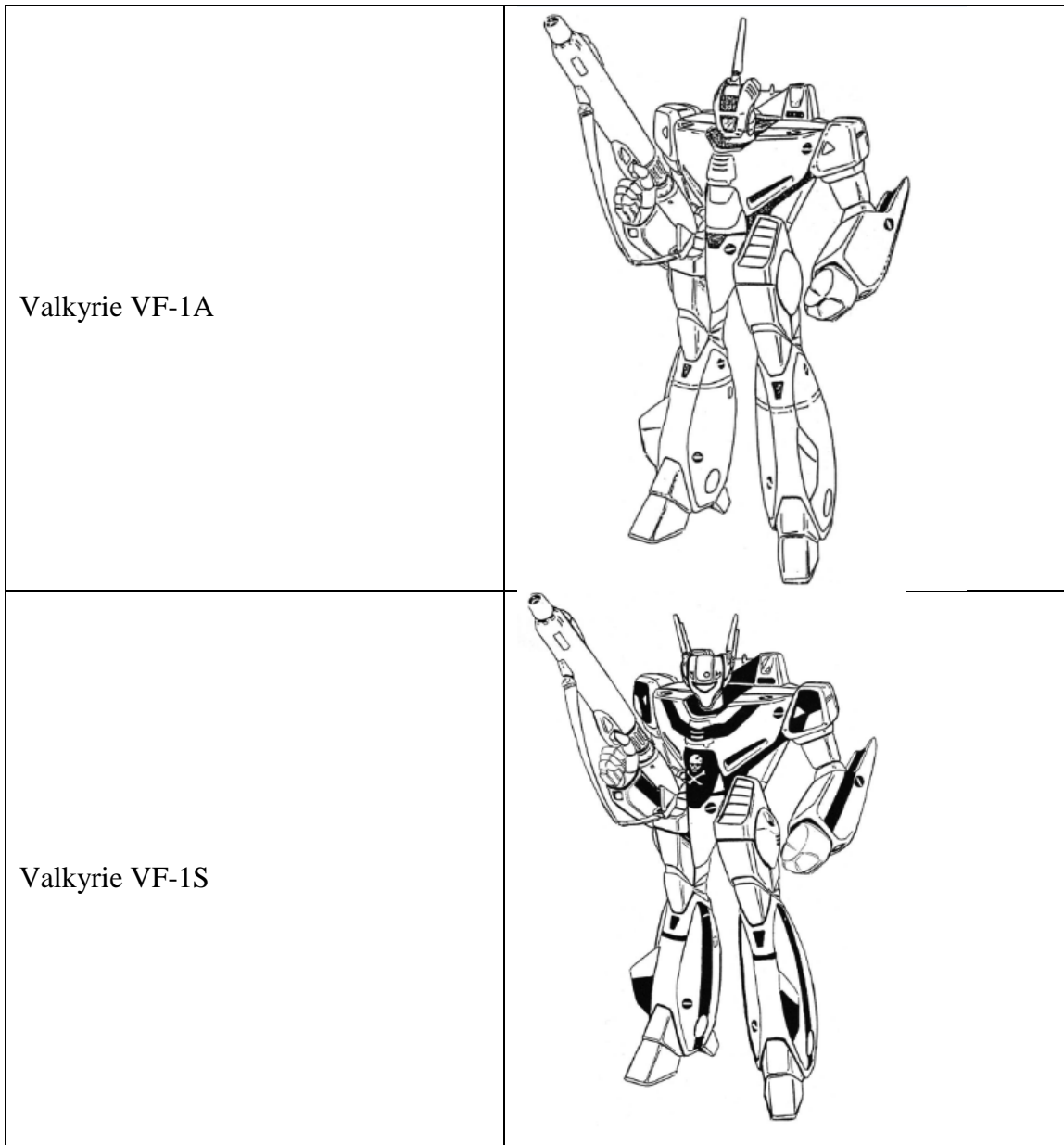


Officer's Pod (Glaug)



Super Valkyrie





Japanese Litigation Between Big West and Tatsunoko

17. In the early 2000s, Big West and Studio Nue on the one hand, and Tatsunoko, on the other hand, underwent a series of litigations in Japan to determine—as between these parties—who owned what rights in and to “Macross.”

18. While the Japanese court decisions limited Tatsunoko’s right to make derivative works based on the “Macross” characters, they confirmed that Tatsunoko owned the copyright in

1 the “Macross” series to the exclusion of Big West and Studio Nue, and that Tatsunoko owned the
 2 exclusive right to license “Macross” internationally, thereby validating Tatsunoko’s exclusive
 3 license of the “Macross” copyright and related international rights to Harmony Gold.

4 19. Harmony Gold is informed, and believes, that Tatsunoko’s exclusive right to
 5 license the works internationally was subsequently confirmed by agreement between Tatsunoko
 6 and Big West.

7 20. As a result of the litigation between Tatsunoko and Big West, Tatsunoko and
 8 Harmony Gold amended their license agreement, first in 1998 and then again in 2003, to remove
 9 Harmony Gold’s exclusive right to make derivative films or television works based on the
 10 “Macross” character images, which include the Robotech warrior robots. However, Harmony
 11 Gold continues to have the exclusive right to make copies of, distribute, publicly perform,
 12 display, and merchandize the “Macross” character images, including the Robotech warrior
 13 robots, in the United States, with full rights to enforce each and all of its exclusive rights.

14 Harmony Gold’s Prior Litigation Against Weisman

15 21. In 1995, Harmony Gold filed a copyright infringement and unfair competition
 16 complaint against FASA Corporation, which was owned by Weisman, and Virtual World
 17 Entertainment for infringement of the Robotech copyrights by the warrior robot designs in the
 18 defendants’ “BattleTech” virtual reality computer games, role playing games, merchandise and a
 19 planned animated television series and toy line.

20 22. This prior litigation concluded when the parties agreed to a “Settlement
 21 Agreement and Mutual General Release” (the “Settlement Agreement”), which had an effective
 22 date of December 19, 1996, and to which Weisman was a signatory. In addition to agreeing to a
 23 monetary payment, Weisman and his co-defendants agreed that they would not “make any use,
 24 and will not authorize [their] licensees to make any use, of the visual design images of the twelve
 25 (12) Battlemechs listed below except as provided in this agreement.” These 12 “Battlemechs”

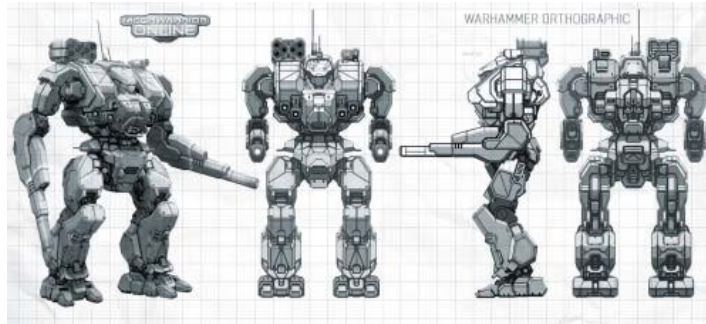
1 include those detailed below in Paragraph 28, which presents side-by-side comparisons of
 2 Harebrained Schemes' and Weisman's current warrior robot designs and the corresponding
 3 Harmony Gold Robotech designs. Weisman also agreed to the entry of a permanent injunction
 4 and acknowledged that violating the use restriction would cause Harmony Gold "irreparable
 5 harm." Further, Weisman agreed that he would not "contest, nor [would he] assist any other
 6 person or entity in contesting, Harmony Gold's exclusive ownership worldwide, excluding
 7 Japan," of the Robotech merchandising rights. This Settlement Agreement is confidential, and
 8 therefore has not been attached to this Complaint.

9 Current Unauthorized Copying by Defendant Piranha Games

10 23. Defendant video game production company Piranha Games developed and
 11 distributes an online game named "MechWarrior Online" incorporating warrior robots, which it
 12 calls "A BattleTech Game." In May 2013, Piranha Games submitted a proposed design to
 13 Harmony Gold for an animated warrior robot for use in MechWarrior Online to get an opinion
 14 from Harmony Gold if this new design infringed Harmony Gold's Robotech copyrights.
 15 Harmony Gold determined that Piranha Games' design unlawfully copied its copyrighted
 16 Destroid Tomahawk warrior robot, and Harmony Gold's outside counsel sent an e-mail to
 17 Piranha Games' founder and president Russ Bullock informing him of that decision. On
 18 information and belief, Piranha Games never used this proposed 2013 design.

19 24. Later in May 2013, Mr. Bullock sent another proposed design for a MechWarrior
 20 Online warrior robot to Harmony Gold's counsel. Harmony Gold determined that Piranha
 21 Games' new design unlawfully copied Harmony Gold's copyrighted Zentradei OBP warrior
 22 robot, and therefore infringed Harmony Gold's registered copyrights. Harmony Gold's counsel
 23 again informed Mr. Bullock of that determination via e-mail. On information and belief, Piranha
 24 Games never used this other proposed 2013 design.

25. In July 2016, Harmony Gold discovered infringing images that unlawfully copied works of its Destroid Tomahawk warrior robot featured on the website of Catalyst Game Labs, a purveyor of board games. A blog post from Catalyst Game Labs reads, “It’s been an absolute blast working withy [sic] Matt Newman, Russ Bullock (and of course their whole great team) generating these lore vignettes.” The following image of the infringing robot warriors appeared on the blog post by Catalyst Game Labs:




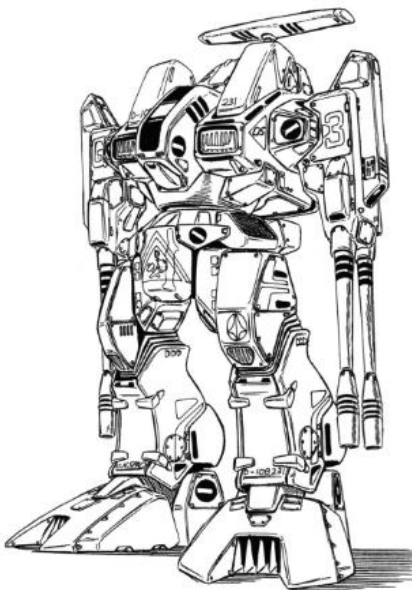

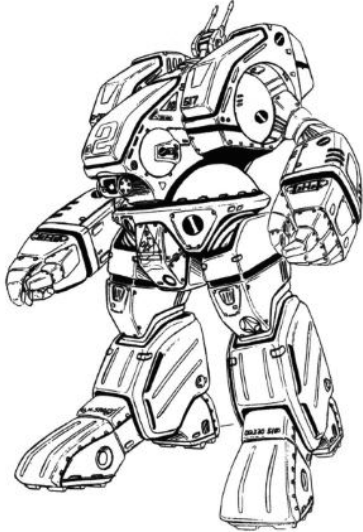
26. Harmony Gold’s counsel immediately e-mailed Mr. Bullock regarding this infringement, and in his response Mr. Bullock admitted that Piranha Games had developed these warrior robot designs, and that Catalyst Game Labs created fan fiction around these designs. He also wrote: “At Piranha we make no claim to any use or legal right to the Robotech Macross designs that are owned by Harmony Gold.”

27. Despite Mr. Bullock’s admission that Piranha Games does not have the right to use Harmony Gold’s copyrighted Robotech designs, Piranha Games is doing exactly that without Harmony Gold’s permission. Piranha Games operates a website for its MechWarrior Online game at www.mwomercs.com. On this site, Piranha Games displays the following images of robot warriors that infringe Harmony Gold’s copyrights and that appear to be used in the MechWarrior Online game:

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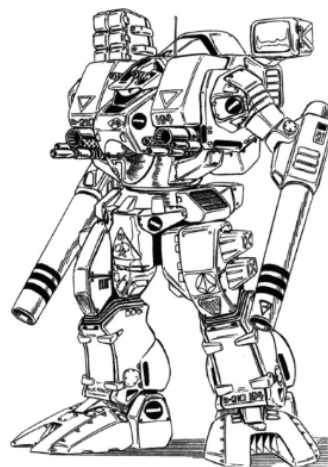
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Piranha Games' Infringing Image	Harmony Gold's Copyrighted Image
	
(Rifleman)	(Destroid Defender)
	
(Archer)	(Destroid Spartan)



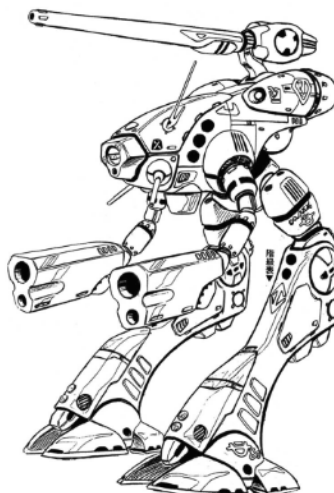
(Warhammer)



(Destroid Tomahawk)



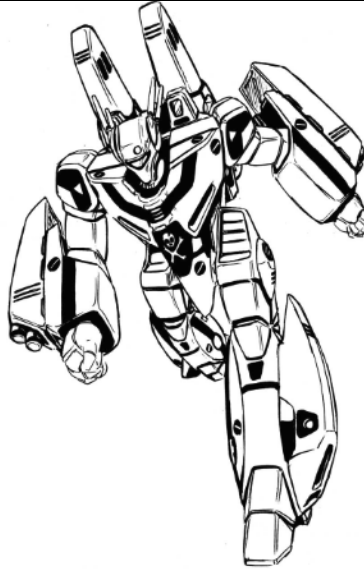
(Marauder/Marauder IIC)



(Officer's Pod/Glaug)



(Phoenix Hawk)



(Super Valkyrie)

28. On October 3, 2016, Harmony Gold's counsel sent a letter to Mr. Bullock and Weisman (as MechWarrior Online is branded as "A BattleTech Game"), demanding that this infringement stop, and demanding that Mr. Bullock and Weisman disclose the relationship between Piranha Games and Harebrained Schemes for the creation of MechWarrior Online. Piranha Games retained U.S. counsel and denied that the robot warriors in MechWarrior Online infringe Harmony Gold's copyrights.


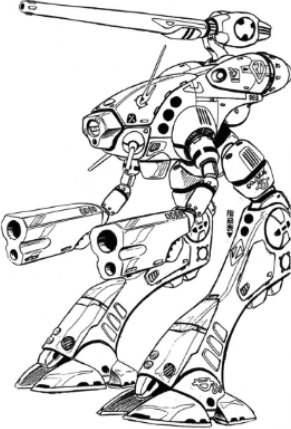


29. To this date, Piranha Games' infringement continues.

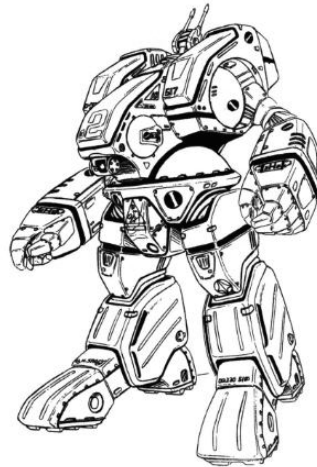
Current Unauthorized Copying by Defendants Harebrained Schemes and Weisman

30. Defendant video game production studio Harebrained Schemes is in the process of developing a new PC video game named "BattleTech." The BattleTech website at www.battletechgame.com reads, "Jordan Weisman, the creator of BattleTech and MechWarrior, is back with the first turn-based BattleTech game for PC in over two decades. BATTLETECH will feature modern turn-based combat, PVP multiplayer, and a story-driven, Mercenaries-style campaign set in the 3025 era of the BattleTech universe."

31. Harebrained Schemes held two crowdfunding campaigns for its BattleTech game. As of April 28, 2017, its Kickstarter campaign had raised \$2,785,537.13 from 41,733 backers, and its BackerKit campaign had raised \$433,058.95 from 49,404 backers.

32. On its websites at www.harebrained-schemes.com and www.battletechgame.com, Harebrained Schemes displays the following images of robot warriors that infringe Harmony Gold's copyrights. On information and belief, these are depictions of the warrior robots that will be featured in the upcoming BattleTech video game:

Harebrained Schemes' Infringing Image	Harmony Gold's Original Image
	 (Officer's Pod/Glaug)
	 (Armored Valkyrie)



(Destroid Spartan)

33. Joe DiNunzio, Chief Financial Officer for Harebrained Holdings, Inc., responded on November 7, 2016, to the October 3, 2016, letter from Harmony Gold's counsel described above in Paragraph 24. In that letter, he claimed that, "Our use of these designs and images is solely through licenses we have obtained from Piranha Games. Our relationship with Piranha Games is solely as a licensee of certain intellectual property."

34. Subsequently, on November 18, 2016, counsel for Weisman and Harebrained Schemes responded to the October 3 letter from Harmony Gold's counsel as follows:


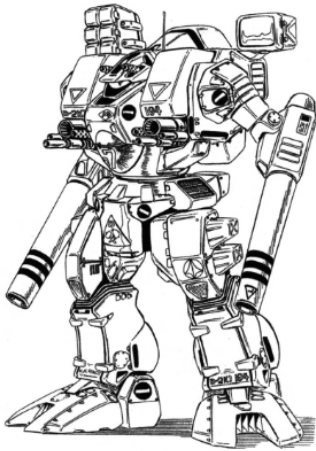
HBS entered into a license agreement with Piranha Games to license certain content for use in a HBS game. We have certain confidentiality obligations with respect to the license agreement so we cannot comment as to specific details. However, we can say that the license agreement makes general commitments about Piranha's rights in the licensed materials provided to HBS, but that the parties did not specifically address the ownership of the 2016 designs.

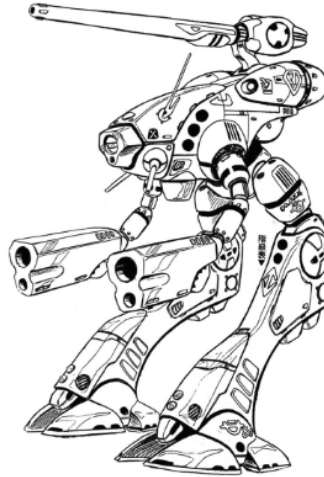
35. To this date, Harebrained Schemes' and Weisman's infringement continues.

Current Unauthorized Copying by Defendant Catalyst Game Labs

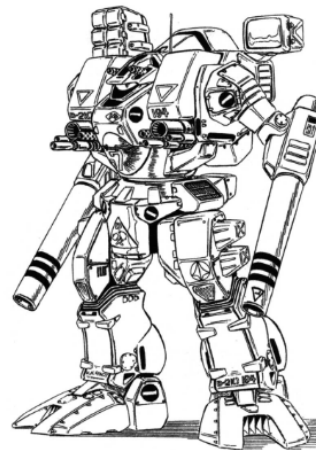
36. Catalyst Game Labs produces a board game and roleplaying game named “BattleTech.”

37. For its BattleTech game, Catalyst Game Labs develops, releases, distributes and sells sourcebooks to create new playing scenarios for players of the game. In 2016, Catalyst Game Labs released a BattleTech sourcebook named “Combat Manual: Mercenaries.” This sourcebook contains numerous images of robot warriors that infringe Harmony Gold’s copyrights, including the following:

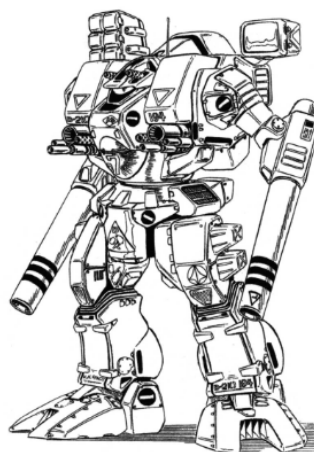
Catalyst Game Labs’ Infringing Image in Combat Manual: Mercenaries	Harmony Gold’s Copyrighted Image
	 (Destroid Tomahawk)



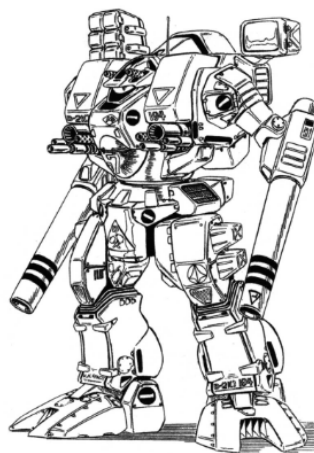
(Officer's Pod/Glaug)



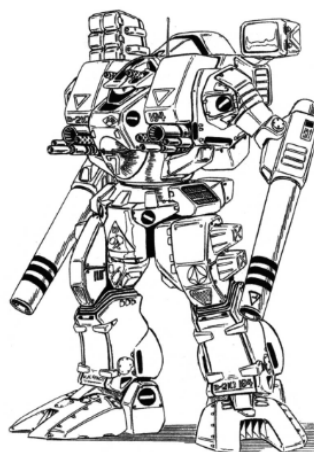
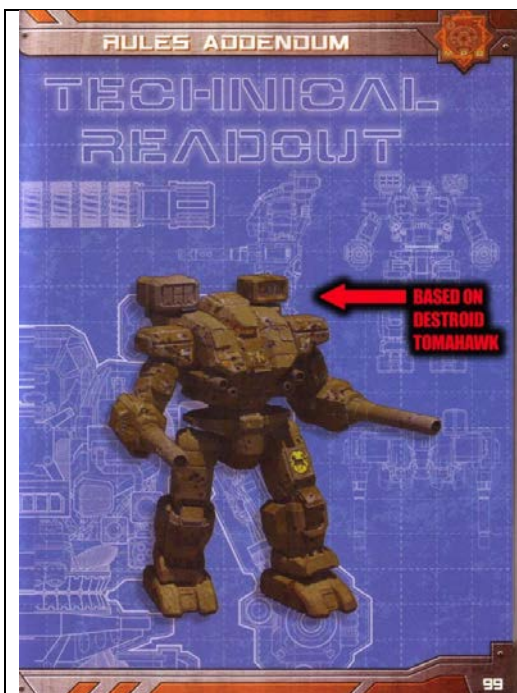
(Destroid Tomahawk)



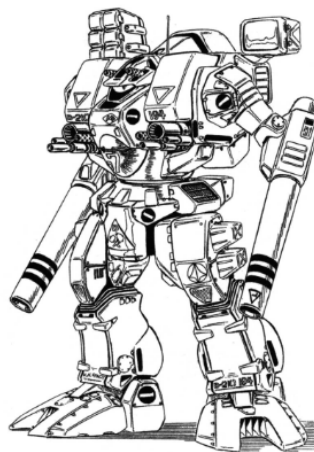
(Destroid Tomahawk)



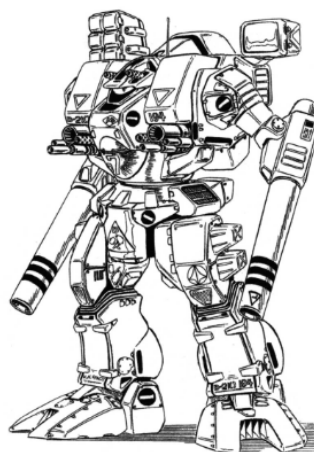
(Destroid Tomahawk)



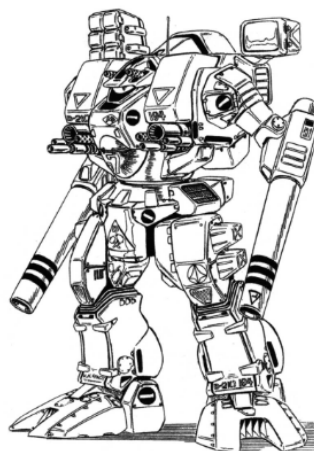
(Destroid Tomahawk)



(Destroid Tomahawk)

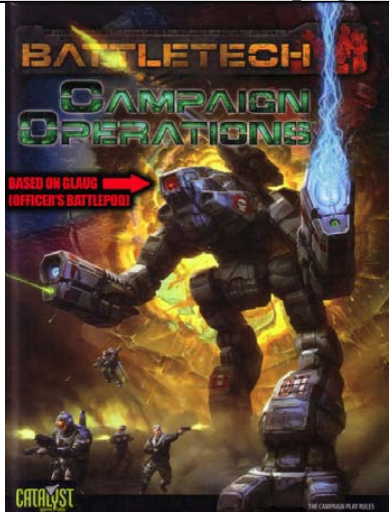
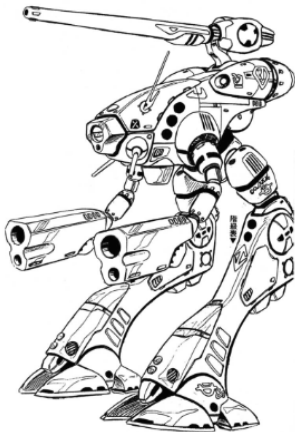

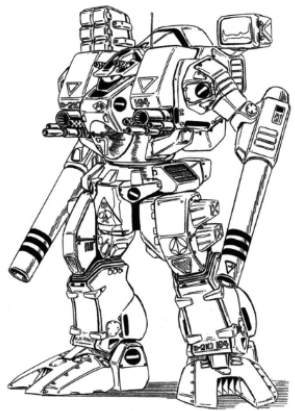


(Destroid Tomahawk)



(Destroid Tomahawk)

38. Catalyst Game Labs also develops, releases, distributes and sells new rule books for its BattleTech game. In 2016, it released a new rule book named “BattleTech: Campaign Operations.” This rule book contains several images of robot warriors that infringe Harmony Gold’s copyrights, including the following:

Catalyst Game Labs’ Infringing Image in BattleTech: Campaign Operations	Harmony Gold’s Copyrighted Image
	 <p>(Officer's Pod/Glaug)</p>
	 <p>(Destroid Tomahawk)</p>



COUNT I COPYRIGHT INFRINGEMENT — ALL DEFENDANTS

39. Harmony Gold repeats and realleges the allegations contained in Paragraphs 1 through 38 as if fully set forth herein.

40. Harmony Gold owns the copyrights to numerous Robotech warrior robots, including those identified above.

41. Defendants have infringed Harmony Gold's copyrights to these warrior robots through their unauthorized copying, distribution and display of warrior robots that are substantially similar to those owned by Harmony Gold, and that infringe upon Harmony Gold's exclusive rights to reproduce, distribute, display, and merchandize the Robotech warrior robots.

42. Defendants had access to Harmony Gold's copyrighted Robotech images prior to Defendants' unauthorized and infringing uses of the images.

45. Harmony Gold is entitled to recover damages sustained from Defendants' wrongful conduct, including Defendants' profits; Harmony Gold's damages; or, alternatively, at Harmony Gold's election, statutory damages.

46. Harmony Gold repeats and realleges the allegations contained in Paragraphs 1 through 45 as if fully set forth herein.

47. Harmony Gold and Weisman entered into a contract (*i.e.*, the Settlement Agreement) in December 1996, which is still valid and in effect today. The Settlement Agreement prohibits Weisman from using colorable imitations of certain Robotech warrior robots owned by Harmony Gold, including making works substantially similar to, or making derivative works of, these warrior robots.

48. As shown in Paragraphs 30–35 above, Weisman, through and with Harebrained Schemes, has created and announced plans to copy, display and distribute warrior robots that are substantially similar to, and unauthorized derivative works of, Harmony Gold’s Robotech warrior robots which Weisman agreed in the Settlement Agreement not to use. Therefore, under the law of the State of Washington, Weisman and Harebrained Schemes have breached the Settlement Agreement.

1 DATED: February 12, 2018.

CALFO EAKES & OSTROVSKY PLLC

2
3 By: s/ Andrew R.W. Hughes

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19 *Attorneys for Plaintiff Harmony Gold U.S.A., Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 12, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants.

DATED this 12th day of February, 2018.

s/ Mary J. Klemz

Mary J. Klemz